

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080504

ORDER GRANTING MOTION FOR
STAY PUT

On August 11, 2015, Mother on behalf of Student filed a request for due process, alleging that San Marcos Unified School District was stopping the provision of placement and services because District contended Mother resided outside the District's boundaries. Mother asserts that she is homeless. The complaint further states the last signed and implemented IEP was with District, which placed Student in Yellowstone Boys and Girls Ranch, a residential treatment center in Billings, Montana. Concurrently with the complaint, Mother filed a motion to stay put, seeking an order that District be required to retain Student's placement at Yellowstone Ranch, until these due process proceedings are complete.

On August 17, 2015, District filed an opposition to the stay put motion, including exhibits and various declarations. On August 19, 2015, Mother filed a response to District's opposition and District filed a "supplement" to its opposition on August 27, 2015

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

Student’s complaint alleges that District is about to stop funding Student’s placement because District claims Mother resides outside of the District. Mother asserts that her living situation has not changed since the last implemented IEP; Mother remains homeless. Mother’s motion for stay put is a one page document requesting a “stay put,” asking that Student remain at Yellowstone Ranch until the due process matter is resolved.

District’s opposition admits on page 5 that there is no dispute that Student’s most recently agreed upon and implemented IEP placement is Yellowstone Ranch. However, District asserts that Mother is not homeless but, instead, resides outside of District. District attached more than 100 pages of exhibits and some short declarations, including a November 4, 2014 IEP, affirming Student’s placement at Yellowstone Ranch. District’s declarations are of various staff and a private investigator, who reviewed his observations of a home located at 5012 Date Street, San Diego, California, which is outside of District. This investigator’s efforts are detailed in District’s written opposition. The opposition asserts that Mother lived at the Date Street address and therefore was not homeless.

Mother’s August 19, 2015 response to District’s opposition states that this investigator is wrong. The investigator actually observed another woman (not Mother) at the Date Street house in July 2015. In its August 27, 2015 “supplement” to its opposition, District withdraws the assertion Mother lives at the address, but continues to contend that Mother is not homeless.

Basically, District requests that OAH find that Mother is not a resident of District, which is the issue posed by Student’s complaint. Here, District relied upon an investigator’s report of his “stake-out” observations in support of its assertion that Mother is not homeless but living outside the District. Yet, within 10 days, District withdraws the contention the Mother was living at the Date Street address, “based on the information obtained subsequent to District’s filing of its opposition.” District still asserts Mother is not homeless, but does not offer definitive evidence in support.

Student is entitled to have the legal issues raised by the complaint decided at a hearing, where the parties may present evidence, challenge the other’s party’s evidence, confront witnesses, and make legal argument. The District’s conduct of relying upon, and subsequently withdrawing, evidentiary support of its assertions illustrates why such questions are best left for hearing, not dueling exhibits and declarations.

Since there is no dispute that Student's placement at Yellowstone Ranch is the last signed and implemented IEP before the complaint's filing, Yellowstone Ranch is Student's stay put placement.

ORDER

1. Student's motion for stay put is granted.
2. Student's stay put placement, during the pendency of the due process proceedings, is Yellowstone Boys and Girls Ranch. In addition to the placement, Student is entitled to all services and supports as set forth and/or referred to in his last implemented IEP.

DATE: August 28, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings